pital incorporated to furnish medical treatment, without capital stock and from which it means to derive no profit is a charitable organization. *Hearns* v. *Waterbury Hospital,* supra; *McDonald* v. *General Hospital,* 120 Mass, 432, 21 Am. Rep. 529. Whether a hospital is public or private must depend on the purposes for which it was erected. *Dartmouth College* v. *Woodward,* 4 Wheat. 518, 668; *Washingtonian Home* v. *Chicago,* 157 Ill. 414, 41 N. E. 893, 29 L. R. A. 798. But neither public, (*Maia* v. *Eastern State Hospital,* 97 Va. 507, 34 S. E. 617, 47 L. R. A. 577,) nor private hospital is liable for the negligence of its employees if it be an eleemosynary institution. (*Downes* v. *Harper Hospital* 101 Mich. 555, 60 N. W. 42, 25 L. R. A. 602,) and the fact that patients who are able to pay are required to do so does not deprive an institution of its eleemosynary character. *Downes* v. *Harper Hospital,* supra; *Ward* v. *St. Vincent's Hospital,* 23 Misc (N. Y.) 91, 50 N. Y. Supp. 466; *Fordham* v. *Thompson,* 144 Ill. App. 342.

PRINCIPAL AND AGENT—TRANSFER OF NEGOTIABLE INSTRUMENT BY AGENT.—Plaintiff signed a note for the sum of one thousand dollars, payable to the order of one Hilbert, for the purpose of having Hilbert procure a loan of that amount for him. Being unable to secure the loan, Hilbert informed plaintiff that the note had been destroyed. Several months before the note became due Hilbert gave the note unindorsed, to defendant as collateral security on a loan that had been made to him individually. Plaintiff brings this action to have the note surrendered and canceled. *Held,* that since Hilbert was the agent of plaintiff, the law of agency and not the law merchant applied, and judgment should be for defendant. *Sublette* v. *Brewington et al.* (1909), — Mo. App. —, 122 S. W. 1150.

Under the rules of law applicable to negotiable instruments, plaintiff should succeed in the present action. "If payable to order an instrument is negotiated by the indorsement of the holder completed by delivery." BUNKER, NEG. INST., § 32. This section of the Negotiable Instruments Law not being complied with, it is evident that defendant took the note subject to all the equities against it, and is in the same position as was Hilbert the payee. *Sturges* v. *Miller,* 80 Ill. 241; *Benson* v. *Abbott,* 95 Ga. 69. As to whether the law of agency should be applied in preference to the law of negotiable instruments, the case presents a peculiar question. The view expressed in the opinion is supported by *Jarvis* v. *Rogers,* 13 Mass. 105; *Clement* v. *Leverett,* 12 N. H. 317. In *Jarvis* v. *Rogers* some shares of stock, which in this instance were negotiated the same as a negotiable instrument, were pledged to secure a debt. With the consent of the pledgor, the debt was paid by a third person and the stock was retained by the third person, who pledged it to defendant as security for an individual debt. It was held that the plaintiff by his own act had caused defendant to assume that the third person owned the stock, and could not deny such ownership to the amount of money advanced by defendant. In *Clement* v. *Leverett,* supra, where a principal accepted bills of exchange drawn on him by his agent, payable to the order of the agent who agreed to get them discounted for the benefit of the principal, and the agent, assuming to be the owner of

the bills, pledged them to secure money borrowed for his own use, it was held that the principal having enabled the agent to hold himself out as owner, was bound by the pledge.

WILLS—PARTIAL REVOCATION.—Testator was a money broker in New York. He made his will in October, 1906. Later, in December of the same year, having lost most of his personal property since the execution of his will, and desiring that upon his death all his property should go to his wife, he made pencil marks through certain items of his will which gave bequests to friends and charged the real estate devised to his wife with the payment of annuities. Across two other items devising real property he wrote the word "sold." After cancelling these items in the will, he told his confidential employee to send it to the man who had engrossed the will and have him make a draft of it according to the corrections. The draft was made but one clause in it did not suit the testator and he did not execute it. After the death of the testator the will with the pencil marks through five of its eleven items was found in his office safe. The proponent, his wife, now seeks to have the will probated with the cancelled parts omitted. *Held,* that the cancellations were made *animo revocandi* and that the will be admitted to probate with the cancelled parts omitted. (GUMMERE, C. J., and REED, TRENCHARD, VOORHEES, MINTURN, *and* VROOM, JJ., dissenting.) *In re Frothingham's Will* (1909), — N. J. Eq. —, 74 Atl. 471.

Under the New Jersey Statute and others similar to it a partial revocation of a will is clearly permitted. *In re Kirkpatrick's Will,* 22 N. J. Eq. 463; *In re Brown's Will,* 40 Ky. (1 B. Mon.) 56, 35 Am. Dec. 174; *Tudor* v. *Tudor,* 17 B. Mon. (Ky.) 383; *Bigelow* v. *Gillott,* 123 Mass. 102. If revoked by cancelling, it can be done with a lead pencil as effectively as if done in ink, provided it was done with intent to revoke the clause cancelled. *Hilyard* v. *Wood,* 71 N. J. Eq. 214, 63 Atl. 7; *Tomlinson's Estate,* 133 Pa. St. 245. Therefore the only question in the principal case is whether the doctrine of dependent relative revocation should apply. Jarman states this rule as follows: "Where the act of destruction is connected with the making of another will so as to fairly raise the inference, that the testator meant the revocation of the old to depend on the efficacy of the new disposition intended to be substituted, such will be the legal effect of the transaction; and, therefore if the will intended to be substituted is inoperative * * * the revocation fails also and the original will remains in force." 1 JARM. WILLS, *120. However the revocation will be effective when it is deliberate and complete and not dependent on any condition, notwithstanding the fact that the testator intended to make another will and afterwards omitted to make it. *Semmes* v. *Semmes,* 7 Md. (H. & J.) 388; *Banks* v. *Banks,* 65 Mo. 432. In the light of the surrounding circumstancecs in the principal case it seems clear that the testator regarded the cancellation of the clauses as a complete and final act and the majority opinion well emphasizes the principle "that in revocations of this nature there is but one point of time as to which the intent of the testator is to have controlling effect, and that is the time of the doing of the very act that constitutes such revocation."